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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: WT Docket No. 95-¹⁵⁷~~937~~

Dear Mr. Caton:

In accordance with Section 1.1206(a)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(2), notice is hereby given of an *ex parte* communication in the above-captioned docket. On September 13, 1996, Mark Golden of the Personal Communications Industry Association (PCIA) and R. Michael Senkowski of Wiley, Rein & Fielding met with Karen Brinkman and David Furth of the Wireless Telecommunications Bureau to discuss unresolved problems with incumbent participation in cost sharing. The topics discussed are fully reflected in the attached summary, which was left with those present at the meeting.

In accordance with the Commission's rules, an original and one copy of this letter and the summary are being submitted for inclusion in the docket file.

If you have any questions, please do not hesitate to call me at (202) 828-4452.

Respectfully submitted,

Karen Kincaid

Karen Kincaid
Wiley, Rein & Fielding

Enclosure

cc: Karen Brinkman
David Furth

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UNRESOLVED PROBLEMS WITH INCUMBENT PARTICIPATION IN COST SHARING

In its Comments in response to the Further Notice in WT Docket No. 95-157, PCIA identified the following problem areas with respect to microwave incumbent self-relocation of links and participation in the cost-sharing process.

- The lack of any independent check on the comparability of the replacement system, including an inability to verify actual usage levels at the time of relocation in order to determine the appropriate throughput capacity for the replacement system.
- The lack of any independent check on the reasonableness of the cost of the replacement system, exacerbated by the absence of incentives for incumbents to search out the best available prices for new equipment.
- An inability to verify whether a system relocation was completed for band clearing purposes or for other reasons, known only to the microwave incumbent, for which compensation would not be required.
- The possibility that incumbents would be able to use cost-sharing to circumvent entirely the negotiation process and the relevant FCC rules, which were intended to minimize relocation costs generally.
- The possibility that incumbents will be able to obtain cost-sharing reimbursement based on the proximity threshold even if their system would not have suffered interference as calculated under Bulletin 10 and, hence, would not have been entitled to relocation compensation.
- An increase in the complexity and frequency of disputes over cost-sharing obligations as PCS licensees challenge incumbent cost-sharing filings for all of the above reasons.

PCIA further pointed out that the several factors identified by incumbents' representatives in the rulemaking would not be sufficient to address these very serious concerns. For example:

- The cost sharing reimbursement caps will not provide a meaningful check on reimbursement claims because they have been established at levels substantially higher than the expected costs of many relocations.
- Maintenance of records concerning the technical description of the incumbent system and the cost of relocation will not be sufficient to determine the actual throughput usage of the original system, or to ensure that the costs are the lowest possible available in the market place.

- Limiting reimbursement for incumbent-relocated links to the costs of PCS provider-relocated links in the same system would only be helpful where the links themselves are comparable and a PCS provider has already negotiated the relocation of other links in the system.
- Utility regulation applicable to some incumbents will provide only limited, if any, oversight, and even that would not be available for the many non-utility incumbents in the band.
- The alleged risk that incumbent-relocated links may not be reimbursed (if no PCS licensee would have interfered with the relocated system) is non-existent for most urban systems and, in any event, is wholly under the control of the incumbent.

If, notwithstanding the above, incumbent participation will nonetheless be permitted, PCIA submits that the following safeguards are required as a minimum:

- MW incumbents must be subject to the same terms and conditions as any other entity relocating a link, including the availability of reimbursement only for links causing interference as defined by the proximity threshold, the reimbursement caps, and the depreciation of reimbursement obligations.
- Self-relocating incumbents should be required to submit an independent, third party appraisal of the actual throughput usage of the original system and the relocation costs for a comparable system, as defined by the rules, to the clearinghouse prior to initiating a relocation. This should include an evaluation of any tower modification or replacement needs.
- Incumbents should be required to submit full documentation of actual relocation expenditures as well as their efforts to minimize costs.
- No twelve-month trial period for the new facilities should be permitted.

Accordingly, PCIA urges the FCC to develop adequate protections to deal with the identified problem areas prior to allowing incumbent participation in cost-sharing. If incumbent participation is not appropriately bounded and conditioned, the Commission's goal of expeditiously bringing PCS to the public will be seriously compromised.